IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 660 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B. V. PARMAR

Versus

DY. CONSERVATOR OF FOREST

Appearance:

1. Special Civil Application No. 660 of 1991

MR SHIVANG SHUKLA for MR YN OZA for Petitioner No. 1

MR AMIT KOTAK AGP for Respondent Nos. 1-4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/12/2002

ORAL JUDGEMENT

#. By filing instant petition under Article 226 of the Constitution the petitioner has prayed to quash order

dated January 25, 1991 passed by Conservator of Forests, Social Forestry, Ahmedabad Circle, Ahmedabad by which the petitioner is suspended from service during the pendency of criminal proceedings initiated against him under the provisions of Prevention of Corruption Act, 1988 (hereinafter referred to as `the Act').

#. At the relevant time the petitioner was serving as Forest Extension Assistant in Kapadvanj Range. It is alleged that on January 4, 1989 he had accepted a sum of Rs.12,000/- by way of illegal gratification from one Mr.K.R.Patel of Kapadvanj. On the basis of complaint of Mr.Patel C.R.No.I/89 was registered against the petitioner with A.C.B. Police Station, Nadiad for the offences punishable under Sections 7 and 12 of the Act. The Conservator of Forests was of the opinion that as prima facie case against the petitioner was made out for acceptance of illegal gratification, it was expedient to place him under suspension during the pendency of the crimina proceedings. Therefore, the Conservator of Forests by exercising powers under Rule 5 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 has placed the petitioner under suspension vide order dated January 25, 1991, giving rise to the present petition.

#. I have heard the learned counsel for the parties. The only point urged in support of the petition is that there was delay of about two years in passing the impugned order and therefore the petition should be accepted. I am afraid such a plea cannot be accepted in view of clear principles enunciated by the Supreme Court in reported decisions. It is well to remember that suspension is not a punishment but is only one way of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. In State of Orissa v. Bimal Kumar Mohanty 1994 SC 2296 the Supreme Court while considering question of suspension of an employee during an inquiry has ruled that each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending

enquiry or contemplated enquiry or investigation and when serious allegations are levelled against the delinquent the order of suspension should not be interfered with unless it is established that it is actuated by malafides, arbitrariness or is passed with ulterior purpose. It would not be out of place here to mention that in the said case the Government servant was placed under suspension by an order dated March 17, 1993 on the basis of audit report for the period from 1984-85 to 1990-91. The Supreme Court has not set aside the order on the ground that there was delay in passing the order of suspension. Again in U.P.Rajya Krishi Utpadan Mandi Parishad and others v. Sanjiv Rajan 1993 Supp (3) SCC 483 the Supreme Court has held that ordinarily when there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. What is explained by the Supreme Court in this decision is that whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter, but even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered.

#. Applying the principles laid down by the Supreme Court to the facts of the present case, the Court finds that the petitioner has failed to establish that the order suspending him from service is actuated by malafides or is passed without authority or with ulterior motive. Suspension during the pendency of criminal proceedings is contemplated by service rules. Therefore, the suspension order is not liable to be interfered with in the present petition, which is filed under Article 226 of the Constitution.

#. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. Interim relief granted earlier by order dated February 25, 1991 is hereby vacated. There shall be no order as to costs.

(J.M. PANCHAL, J.)

[SNDEVU]
P.S.